2025 INSC 645

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1622 OF 2022

Sarla Gupta & Another ... **Appellants**

versus

Directorate of Enforcement ... **Respondent**

with

CRIMINAL APPEAL NO.730 OF 2024

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

CRIMINAL APPEAL NO.1622 OF 2022

1. Criminal Appeal no.1622 of 2022 takes an exception to the impugned judgment and order of the High Court of Delhi dated 22nd July, 2019, in a writ petition filed by the present appellants. In July 2017, the Central Bureau of Investigation (for short, 'the CBI') registered a First Information Report (for short, 'FIR') against the appellants for the offences punishable under Section 120-B read with Section 420 of the Indian Penal Code, 1860 (for short,

'the IPC') and Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). Based on the said FIR, an Enforcement Case Information Report (for short, 'the ECIR') was registered by the Directorate of Enforcement (for short, 'the ED'). A complaint under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA') was filed before the Special Court on 24th August 2018. The appellants were shown as accused in the complaint. The allegation in the complaint is of the commission of the offence under Section 3 of the PMLA, which is punishable under Section 4 of the PMLA. The Special Judge took cognizance of the offence on 17th September 2018. The appellants were supplied copies of the complaint and some documents relied upon by the prosecution. An application was made by the appellants to the Special Court for the grant of copies of the following categories of documents: (a) documents relied upon in the complaint but not supplied; (b) documents supplied which were not legible; and (c) documents collected during the investigation which were suppressed.

2. The ED contested the said application. By the order dated 30th March 2019, the Special Court rejected the said application

by holding that the prosecution is under an obligation to supply only those documents which are referred to and relied upon in the complaint/ chargesheet and it is under no obligation to supply the documents which were collected during the investigation which were not relied upon. The appellants filed a writ petition challenging the said order, which has been dismissed by the High Court by the impugned judgment.

CRIMINAL APPEAL NO. 730 OF 2024

3. Criminal Appeal no.730 of 2024 takes an exception to the judgment dated 18th November 2022 in a writ petition filed by the appellants. Even in this case, a complaint was filed under Section 44 of the PMLA and cognizance was taken by the Special Court on 31st August 2021. The appellants were shown as accused therein. In this case, a predicate offence was registered under Section 420 of the IPC. In August 2019, the ED conducted various searches in the office and residential premises of the appellants. The ED seized documents/records/ property. Applications were moved under Section 17 of the PMLA seeking a direction to provide a list of the documents seized by the ED and copies of the documents seized.

The Adjudicating Authority under the PMLA allowed the applications. An appeal against the said order is pending before the Appellate Authority.

4. The second appellant filed an application before the Special Court seeking a direction to the ED to supply the documents seized during the raids/searches conducted by it to enable the appellants to defend their case before the Special Court. The Special Court rejected the said application by the order dated 22nd March 2022. Accordingly, the appellants filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the CrPC') before the High Court of Punjab and Haryana at Chandigarh to challenge the said order. By the impugned judgment and order, the High Court dismissed the said writ petition.

SUBMISSIONS

APPELLANTS

5. Detailed submissions have been made in both appeals. In support of Criminal Appeal no.1622 of 2022, the learned senior counsel appearing for the appellants urged that the right under Section 207 of the CrPC is not restricted to the documents relied upon by the prosecution. The right under Section 207 to get

documents includes all the documents collected during the investigation. He submitted that Sections 207 and 208 of the CrPC must be complied with before the trial commences. He submitted that the right to get all the documents collected during the investigation flows from the right to a free and fair trial, which is guaranteed under Article 21 of the Constitution of India. He referred to the provisions of the Code of Criminal Procedure, 1898 (for short, 'the 1898 CrPC'). He submitted that Section 207 of the CrPC has been retained in the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') in the form of Section 230. He submitted that in view of Section 46(1) read with Section 65 of the PMLA, all the provisions of the CrPC shall apply to the proceedings under the PMLA, insofar as the same are not inconsistent with the provisions of the PMLA. He submitted that no provision of the PMLA is inconsistent with Section 207 of the CrPC and Section 230 of the BNSS. He pointed out the provisions of the PMLA which are inconsistent with the CrPC. He also pointed out the law prevailing in the United States of America (for short, 'USA') and the United Kingdom (for short, 'UK'). He relied upon several decisions of this Court and the Courts in the USA and the UK.

6. In support of Criminal Appeal no.730 of 2024, the learned senior counsel appearing for the appellants submitted that relevant provisions of the CrPC mandate that the prosecution must provide copies of the relied upon documents, documents in its custody which are not relied upon, as well as the list of documents to the accused, before framing of a charge.

7. He submitted that in view of Section 45(1)(ii) of the PMLA, while deciding the bail application, the burden is on the accused to show that there are reasonable grounds to believe that he is not guilty of such an offence. He submitted that this is a standalone provision not found in other penal statutes. He submitted that, therefore, at the stage of hearing the bail applications, the accused is entitled to seek the production of documents that will help him to discharge the burden. He submitted that in view of Section 44(1)(b) of the PMLA, no committal of an accused to the Sessions Court is required. He also submitted that in view of Section 65 read with Section 46 of the PMLA, provisions of the CrPC apply to the proceedings under the PMLA. He also pointed out various decisions in support of his submissions.

RESPONDENTS

8. The submission of the learned Additional Solicitor General (for short, 'ASG') appearing for the ED is that all the documents relied upon by the ED in the complaint have been supplied to the appellants. He submitted that the accused is entitled to only the relied upon documents and has no right to seek documents with the ED which are not relied upon, at the stage of framing of charge. He submitted that in the offence that is the subject matter of Criminal Appeal no.730 of 2024, the ED is carrying out further investigation. Therefore, before completion of the investigation, the appellants are not entitled to seek copies of the documents not relied upon by the ED. He submitted that the law is very well settled and that at the time of framing of the charge, the Court can only look into the documents that are part of the chargesheet and no other document. The accused cannot rely upon something that is not a part of the chargesheet at the time of hearing on framing of charge. The accused cannot seek production of the documents that were not relied upon by the ED at the time of framing of the charge. The learned ASG also referred to Section 204 of the CrPC. He submitted that in view of the said provision, the accused is only

entitled to get a copy of the complaint and documents filed along with the complaint.

9. Relying upon a decision of this Court in the case of ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re v. State of Andhra Pradesh & Ors***[1], he submitted that it is held by this Court that an accused is entitled to only a list of the documents not relied upon by the prosecution and not the copies of the said documents. He submitted that at the trial stage, the accused can seek production of the said documents. The learned ASG submitted that Section 208 of the CrPC is not applicable for seeking copies of documents not relied upon by the prosecution. He submitted that Section 208 applies at the stage when the learned Magistrate has not committed a case to the Court of Session. He submitted that the question of committal does not arise in the case of an offence under the PMLA, in view of Section 44(1)(b) of the PMLA. He submitted that the Special Court does not have inherent powers at par with the High Court under Section 482 of the CrPC. He submitted that in the absence of any specific provision empowering the Special Court to direct the supply of

[1] (2021) 10 SCC 598 : 2021 SCC OnLine SC 329

documents to the accused and in the absence of any inherent power vested in the Special Court, a direction to supply documents not relied upon by the prosecution to the accused cannot be issued by the Special Court. He submitted that the orders passed by the Special Court are interlocutory in nature and therefore, the High Court ought to be slow in interfering with such interlocutory orders in exercise of its power under Section 482 of the CrPC.

CONSIDERATION OF SUBMISSIONS

CRIMINAL APPEAL NO 730 OF 2024

10. In Criminal Appeal no.730 of 2024, the petitions filed by the appellants and another accused were disposed of by the common order dated 18th November 2022. The challenge before the High Court was to the order dated 22nd March 2022. In this case, the ED had conducted raids/searches at different premises of the accused and seized various documents under the seizure memo drawn. The second appellant and the co-accused (Ashok Solomon) filed separate applications seeking a direction to the ED to supply copies of the documents seized under the seizure memo. The learned Special Judge under the PMLA rejected the applications by holding that the investigation was in progress and the charges

were yet to be framed. The Special Court relied upon a decision of this Court in the case of ***State of Orissa v. Debendra Nath Padhi***[2].

11. The Special Court held that the appellants had no right to place any document on record which was not a part of the complaint at the time of framing of the charge. Before the High Court, reliance was placed on the decision of this Court in the case of ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re***[1]. The High Court held that the documents relied upon were already supplied by the ED. However, the appellants were entitled to seek only a list of documents which were not relied upon by the ED. The High Court held that at the time of framing of charges, reliance can be placed only on the documents filed by the prosecution. Therefore, the appellants were not entitled to the copies of the documents which were not relied upon by the prosecution. However, the High Court observed that in case the appellants so require, they can always file an

[2] (2005) 1 SCC 568 : 2004 SCC OnLine SC 1491

appropriate application before the learned Special Judge for a direction to the prosecution to supply the list of such documents.

RIGHT TO GET COPIES OF THE RECORD/DOCUMENTS SEIZED AS PER SECTIONS 17 AND 18 OF THE PMLA

12. Under Section 17 of the PMLA, a power is vested in the Director or other authorised officers to conduct a search and seizure of record or property. Section 17 of the PMLA reads thus:

> **"17. Search and seizure.—** (1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—
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> (i) has committed any act which constitutes money-laundering, or
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> (ii) is in possession of any proceeds of crime involved in money-laundering, or
>
> (iii) is in possession of any records relating to money-laundering, or
>
> (iv) is in possession of any property related to crime,
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> then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—
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> (a) enter and search any building, place, vessel, vehicle or aircraft where he has

reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) **seize any record or property found as a result of such search;**

(d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act.

(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the

officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence: Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.**"**

(emphasis added)

13. Section 18 deals with the power to search persons and seize records or property in their possession. Section 18 reads thus:

> "**18. Search of persons.—**(1) **If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act:**
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> (2) The authority, who has been authorised under sub-section (1), shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.
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> (3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by anyone except a female.

> (9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:
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> (10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority."
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> (emphasis added)

Thus, Section 17 confers a power to search a building, place, vessel, vehicle, etc. and to seize any record or property found during the search. Section 18 confers a power on the authority to search persons and seize record or property from them.

14. Section 2(w) of the PMLA defines 'records', which include records maintained in the form of books or stored in a computer or such other form as may be prescribed. 'Property' is defined under Section 2(v), meaning any property or assets of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets wherever located. Thus, deeds and instruments of title are

included in the definition of property and books or records stored in a computer become records within the meaning of Section 2(w).

15. Section 20 deals with retention of the property seized under Section 17 or Section 18 or frozen under sub-section (1A) of Section 17 of the PMLA. Section 21 deals with the retention of records. Sections 20 and 21 read thus:

> **"20.Retention of property.—**(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.
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> (2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority

shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, Special Court, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Special Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

21. Retention of records.—(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation or release under sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, the Adjudicating Authority shall direct

> the release of the records to the person from whom such records were seized.
>
> (6) Where an order releasing the records has been made by the Court Adjudicating Authority under sub-section (5) of section 21, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of receipt of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.**"**
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> (emphasis added)

16. Sub-rule (2) of Rule 4 of the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005 (for short, 'the 2005 Rules') mandates the authority exercising the power of seizure to prepare seizure memo (inventory of items) in Form-II appended to the 2005 Rules. Sub-rule (4) of Rule 4 provides that a copy of the list of seized property prepared shall be delivered to the occupant of the building or place searched or to any person on his behalf. Thus, the person from whose premises the properties are seized is entitled to receive a copy of the list of the seized properties.

17. Under sub-section (2) of Section 21 of the PMLA, the person from whom the records are seized is entitled to a copy of the records, which include the record in the form of books or records stored in a computer. Therefore, the person from whom the record is seized is entitled to the copies thereof as a matter of right.

18. As stated earlier, the definition of 'property' under Section 2(b) includes deeds and instruments evidencing title or interest in such property or asset. The order of retention of the property under Section 20 does not amount to forfeiture of the property. The seized property does not vest in the ED. There is no prohibition on providing copies of the deeds or instruments evidencing title to the person from whom or from whose premises the deeds or instruments are seized. If the provision is interpreted to mean that the person from whom such deeds or instruments are seized is not entitled to receive even copies of the same, the provision will be rendered arbitrary and violative of Article 14 of the Constitution. Therefore, as far as the seized documents and records are concerned, the person from whom or from whose premises the seizure has been made is entitled to get the true copies thereof. As far as the other property seized is concerned, the person from

whom the property is seized is entitled to a copy of the seizure memo and the list of the properties seized.

19. In this case, we are called upon to decide only the issue of the supply of seized documents and records. To that extent, the Special Court and the High Court have committed an error. They rejected the prayers made for providing copies of the seized documents. When the records are seized from the custody of the accused, there is no reason why the true copies of the seized documents should not be provided on an application being made by the accused. The same is the case with the instruments or documents of title forming part of the property seized. If the documents are bulky, even soft copies thereof can be provided. Even if the seized record or documents are not relied upon in the complaint, copies must be supplied, though the accused will not be entitled to rely upon them at the time of framing the charge. Hence, the impugned orders deserve to be set aside.

CRIMINAL APPEAL NO 1622 OF 2022

RIGHT OF AN ACCUSED TO GET COPIES OF THE DOCUMENTS RELIED UPON IN THE COMPLAINT UNDER SECTION 44(1)(b)

OF THE PMLA AND THE DOCUMENTS PRODUCED ALONG WITH THE COMPLAINT

20. In Criminal Appeal No.1622 of 2022, writ petitions were filed to challenge the common order dated 30th March 2019 passed by the learned Special Judge (under the PC Act) who was also a Special Judge under the PMLA. There were two applications decided by the said common order. The first application was made on 11th February 2019. It is stated in the said application that the documents provided by the ED have been arranged in eight volumes containing a total of 3535 pages. It is mentioned in the application that about 45 relied upon documents mentioned in the application were not supplied to the appellants. The application contains a list of eight illegible documents. A prayer was made to issue a direction to the ED to provide copies of these documents. Another application was made by the appellant on 27th March 2019, stating that on inspection of the file of the Court in the presence of the investigating officer, eight documents mentioned therein were found to be illegible. It was also stated that pages 1323, 1770 to 1779 and 2000 were not available in the Court record and pages 1367 and 1368 have been numbered twice on

different documents. It was also pointed out in paragraph 4 that certain pages mentioned in the application were legible in the Court file but illegible in the documents supplied to the appellant. By the order dated 30th March 2019, the said applications were dismissed.

21. The Special Court referred to a decision of the Delhi High Court in the case of ***Dharambir v. Central Bureau of Investigation***[3]. The learned Special Judge held that:

> (a) The appellants have not stated that the prosecution was relying upon the documents, but the copies were not given to them;
>
> (b) It is not the case of the appellants that these documents which the prosecution has withheld, were of sterling quality, and if the same were produced, the appellants may be discharged;
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> (c) In economic offences, the investigation is conducted at length and a large number of documents are collected, but not every document is relevant. The Investigating Officer files

[3] 2008 SCC OnLine Del 336 : ILR (2008) 2 Delhi 842

only those documents which are relevant for proving the case; and

(d) In the relied upon documents, there is a reference to innumerable other documents which are not relied upon. A direction cannot be issued to the prosecution to supply such documents.

22. In the impugned judgment, the High Court also relied upon the decision of the Delhi High Court in the case of ***Dharambir***[2]. It was further held that neither Section 207 nor Section 208 of the CrPC can be applied *mutatis mutandis* to the proceedings/complaint under the PMLA. It was further observed that as the charge has not been framed, the trial has not commenced. Therefore, the High Court proceeded to dismiss the writ petitions.

23. The offences under the PMLA, as provided under Section 44(1)(a), are triable by the Special Court. Under Section 43(1), there is a power vested in the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more courts of session as Special Courts. Thus, the Special Court under

the PMLA is presided over by a Session Judge. Under Section 44(1)(b), the Special Court is empowered to take cognizance of the offence under Section 3 of the PMLA only upon a complaint. Clause (b) provides that cognizance of the offence under Section 3 can be taken by the Special Court without the accused being committed to it for trial. Under Section 44(1)(b), it is provided that a Special Court, while trying the offence of money laundering, shall proceed with the trial in accordance with the provisions of the CrPC as it applies to a trial before the Court of Session. Therefore, the provisions of Chapter XVIII of the CrPC will apply to the proceedings of a complaint under Section 44(1)(b) (Chapter XIX of the BNSS). Therefore, in view of Section 228 of the CrPC (Section 251 of the BNSS), a charge is required to be framed in the complaint.

24. In the case of ***Yash Tuteja & Anr. v. Union of India & Ors***[4], in paragraph 6, this Court held thus:

> **"6.** The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorised on this behalf. Section 46 PMLA provides that the

[4] (2024) 8 SCC 465 : 2024 SCC OnLine SC 533

> provisions of CrPC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of CrPC provisions, the Special Court shall be deemed to be a Court of Sessions. **However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act". Considering the provisions of Section 46(1) PMLA, save as otherwise provided in PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short "CrPC") shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 CrPC will apply to the complaint. There is no provision in PMLA which overrides the provisions of Sections 200 to Sections 204 CrPC.** Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 PMLA is made out in a complaint under Section 44(1)(b) PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 PMLA is made out, it must exercise the power under Section 203 CrPC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 CrPC.**"**
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> (emphasis added)

Hence, the provisions of Sections 200 to 204 of the CrPC (Sections 223 to 227 of the BNSS) will apply to a complaint under Section 44(1)(b) of the PMLA.

25. As held by this Court, Section 204 of the CrPC (Section 227 of the BNSS) is applicable to a complaint under Section 44(1)(b) of the PMLA. Sub-section (3) of Section 204 of the CrPC (sub-section (3) of Section 227 of the BNSS) reads thus:

> **"204. Issue of Process –**
> .. ..
> (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.**"**

Thus, after taking cognizance, the process issued on the complaint under Section 44(1)(b) of the PMLA to the accused must be accompanied by a copy of the complaint. If any documents are annexed or produced along with the complaint on the basis of which cognizance is taken, it follows that even the copies of those documents must be supplied to the accused. The copies of the documents annexed to the complaint or produced in the complaint cannot be separated from the complaint, as they form a part of the complaint. These are the documents on the basis of which cognizance is taken by the Special Court. Therefore, the accused is entitled to receive copies of the same as a matter of right. The same principle will apply to the documents annexed to or produced

with supplementary complaints. If the Special Court has recorded the statements of the complainant and witnesses, if any, in accordance with Section 200 of the CrPC (Section 223 of the BNNS), the accused must get copies thereof as the order of cognizance is passed based on the said statements.

26. There are two important provisions under the CrPC which deal with the supply of documents. The same are Sections 207 and 208 of the CrPC (Section 230 and 231 of the BNSS respectively), which read thus:

> **"207. Supply to the accused of copy of police report and other documents.—** In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—
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> (i) the police report;
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> (ii) the first information report recorded under section 154;
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> (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.— Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;

> (ii) the statements and confessions, if any, recorded under section 161 or section 164;
>
> (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:
>
> Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.**"**

Section 207 of the CrPC applies when the proceedings have been instituted on a police report. Section 208 applies to a case that is instituted otherwise than on a police report, and the learned Magistrate is of the view that the case is exclusively triable by the Court of Sessions.

27. Section 207 of CrPC applies when the chargesheet is filed. Thus, after the charge sheet is filed, the accused is entitled to copies of the police report, FIR, confessions, statements, if any, recorded under Section 164 of the CrPC, and statements recorded under sub-section (3) of Section 161 of the CrPC of all the persons whom the prosecution proposes to examine as witnesses. There is an exception to the rule as regards the supply of statements under Section 161(3) of the CrPC. Sub-section (6) of Section 173 (sub-

section (7) of Section 193 of the BNSS) provides that if the police officer is of the opinion that any part of such statement is not relevant to the subject matter of the proceeding or that its disclosure to the accused is not essential in the interest of justice and is inexpedient in public interest, he shall indicate that part of the statement and append a note requesting the learned Magistrate to exclude that part of the statement from the copies to be provided to the accused. The police officer is required to state reasons for making such a request. As can be seen from the first proviso to Section 207 of the CrPC, after considering the request of the police officer and the reasons given by him, it is open for the learned Magistrate to direct a copy of that part of the statement or such portion thereof as the learned Magistrate thinks proper, to be furnished to the accused. However, the learned Magistrate is not bound by the request made by the police officer. After considering the request, the learned Magistrate is empowered to reject the request of the police officer and supply the complete copies of such statements. It is pertinent to note that the Police have the power to apply for the exclusion of parts of only the statements. This

power does not extend to the documents covered by clause (v) of Section 207.

28. Now, we come to Section 208 of the CrPC. When a case is instituted by way of a complaint under Section 200 of the CrPC, if it appears to the learned Magistrate issuing process that the offence is triable by a Court of Session, the learned Magistrate is duty bound to supply the copies of the statements recorded under Section 200 or Section 202 of all the persons examined by the learned Magistrate to the accused. He is also duty bound to supply to the accused the statements and confessions, if any, recorded under Section 161 or Section 164, and any document produced before the learned Magistrate on which the prosecution proposes to rely. Even Section 208 does not permit withholding of any documents from the accused. If a document is bulky, it allows the accused to inspect it.

29. If we peruse Sections 209 and 238 of the CrPC (Sections 232 and 261 of the BNNS), these provisions reiterate the mandatory requirement of providing the documents referred to in Sections 207 and 208 of the CrPC.

30. Both Sections 207 and 208, on the face of it, do not specifically apply to a complaint under Section 44(1)(b) of the PMLA. But, there is no reason why the principles laid down under Sections 207 and 208 should not be applied to a complaint under Section 44(1)(b) of the PMLA. The provisions are consistent with the principles of fair play. The object of the provisions is to protect the rights of accused persons. An accused is entitled to a fair trial as he has the right to defend himself. That is the essence of Article 21 of the Constitution. Therefore, once cognizance is taken on the basis of a complaint under Section 44(1)(b) of the PMLA, the learned Special Judge must direct that along with the process, a copy of the complaint and the following documents must be provided to the accused:

a. Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

b. The documents including the copies of the Statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the

documents produced subsequently by the ED till the date of taking cognizance; and

c. Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

After cognizance is taken on the basis of the complaint, the ED cannot be heard to say that a document has been produced with the complaint or in the proceedings of the complaint, but it is not a relied upon document. The copies of documents must be supplied along with a copy of the complaint as required by sub-section (3) of Section 204 of the CrPC (sub-section (3) of Section 227 of the BNSS).

THE RIGHT OF AN ACCUSED TO SEEK PRODUCTION OF THE DOCUMENTS NOT RELIED UPON BY THE PROSECUTION

31. Now, we come to the decision of this Court in the case of ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re***[1]. This Court, in paragraph 11 of the said decision, held thus:

> **"11.** The Amici Curiae pointed out that at the commencement of trial, accused are

only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. **This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC for their production during the trial, in the interests of justice. It is directed accordingly; the Draft Rules have been accordingly modified. [Rule 4(i)]"**

(emphasis added)

Accordingly, Rule 4(i) of the Draft Criminal Rules of Practice, 2021 was formulated, which reads thus:

"4. Supply of documents under Sections 173, 207 and 208 CrPC.—

(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in

> accordance with Sections 207 and 208 CrPC.**"**
>
> **Explanation**: **The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer**"
> (emphasis added)

Therefore, it is held that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91 of the CrPC (Section 94 of the BNSS) for providing copies of the documents which are not relied upon by the prosecution. This decision upholds the right of the accused to apply for the supply of copies of the documents which are not relied upon by the prosecution at an appropriate stage by making an application to the Court.

32. This requirement was again quoted with approval in a decision of the Coordinate Bench of this court in the case of ***Manoj***

***& Ors. v. State of Madhya Pradesh*[5].** Paragraphs 208 and 209 of the said decision read thus:

> "**208**. This view was endorsed in a recent three-Judge Bench decision of this Court in Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re v. State of A.P. [Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re v. State of A.P., (2021) 10 SCC 598 : (2022) 1 SCC (Cri) 100] This Court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all States and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation—to the accused. The relevant draft guideline, approved by this Court, for adoption by all States is as follows : (SCC p. 608, para 21)
>
> "21. … '… 4. Supply of documents under Sections 173, 207 and 208CrPC.—(1) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208CrPC.
>
> Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents,

[5] (2023) 2 SCC 353

> material objects and exhibits that are not relied upon by the investigating officer."
> This extract is taken from Manoj v. State of M.P., (2023) 2 SCC 353 : 2022 SCC OnLine SC 677 at page 452
> **209**. **In view of the above discussion, this Court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer.** The presiding officers of courts in criminal trials shall ensure compliance with such rules."
>
> (emphasis applied)

Therefore, what can be deduced from the above decisions is that the accused has the right to ask for the supply of documents not relied upon by the prosecution by making an application to the Court. The question is at what stage the accused can demand copies of the documents.

WHETHER AN ACCUSED IS ENTITLED TO SEEK COPIES OF THE DOCUMENTS NOT RELIED UPON BY THE PROSECUTION AT THE STAGE OF FRAMING OF CHARGE

33. At this stage, we may make a reference to the decision of this Court in the case of ***Debendra Nath Padhi***[3]. This Court was

considering the provision of discharge under Section 227 of the CrPC, which reads thus:

> **"227. Discharge.—** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.**"**

The issue before this Court was what is the meaning of 'the record of the case' which is required to be considered for the purposes of framing of charge. Paragraph 8 of the said decision reads thus:

> **"8.** What is the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the

case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.**"**

In paragraph 25 of the said decision, this Court held thus:

> **"25.** Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. **Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence.** When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering

> the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. **If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence.** Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.**"**
>
> (emphasis added)

Thus, this Court observed that the entitlement of the accused to seek an order under Section 91 of the CrPC for the production of the documents that are not relied upon would ordinarily not come till the stage of defence. These observations are in the context of what constitutes 'the record of the case' for the purposes of Section 227 of the CrPC. Even this judgment recognizes the right of the accused to seek documents at the time of leading defence evidence by invoking Section 91 of the CrPC. We may note here that what is observed by this Court is that there is no absolute prohibition

on an accused making an application under Section 91 of CrPC, before the stage of entering upon defence. It is held that ordinarily, the entitlement of the accused to apply under Section 91 will not arise till the stage of defence.

34. As far as the supply of documents is concerned, we may refer to the decision of the Constitution Bench in the case of ***Assistant Collector of Customs, Bombay & Anr. v. L.R. Melwani & Anr***[6]**.** Paragraphs 11 to 14 of the said decision read thus:

> **"11.** We also see no merit in the contention that the accused in this case are entitled to the benefit of Section 173(4), Criminal Procedure Code which provides that before the commencement of the enquiry or trial the officer-in-charge of the police station who forwards a report under Section 173, Criminal Procedure Code, should furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Section 173(1), Criminal Procedure Code of the first information report recorded under Section 154, Criminal Procedure Code and all other documents or relevant extracts thereof on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under Section 164, Criminal Procedure Code and the statements recorded under Section 161, Criminal Procedure Code

[6] (1969) 2 SCR 438 : 1968 SCC OnLine SC 161

of all the persons whom the prosecution proposes to examine as its witnesses.

12. On a plain reading of Section 173, Criminal Procedure Code, it is clear that the same is wholly inapplicable to the facts of the present case. In the instant case no report had been sent under Section 173, Criminal Procedure Code. Therefore that provision is not attracted. That provision is attracted only in a case investigated by a police officer under Chapter XIV of the Criminal Procedure Code, followed up by a final report under Section 173, Criminal Procedure Code. It may be remembered that sub-section (4) of Section 173, was incorporated into the Criminal Procedure Code for the first time by Central Act 26 of 1955, presumably because of the changes effected in the mode of trials in cases instituted on police reports. Before the Criminal Procedure Code was amended by Act 26 of 1955, there was no difference in the procedure to be adopted in the cases instituted on police reports and in other cases. Till then in all cases irrespective of the fact whether they were instituted on police reports or on private complaints, the procedure regarding enquiries or trials was identical. In both type of cases, there were two distinct stages i.e. the enquiry stage and the trial stage. When the prosecution witnesses were examined in a case before a charge is framed, it was open to the accused to cross-examine them. Hence there was no need for making available to the accused the documents mentioned in sub Section (4) of Section 173, Criminal Procedure Code. The

right given to him under Section 162, Criminal Procedure Code was thought to be sufficient to safeguard his interest. But Act 26 of 1955 as mentioned earlier made substantial changes in the procedure to be adopted in the matter of enquiry in cases instituted on police reports. That procedure is now set out in Section 251(a), Criminal Procedure Code. This new procedure truncated the enquiry stage. Section 251(a), Criminal Procedure Code says that the Magistrate, if upon consideration of all the documents referred to in Section 173 and making such examination if any, of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard considers the charge against the accused to be groundless he shall discharge him but if he is of opinion that there is ground for presuming that the accused has committed an offence triable as a warrant case which he is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against him. Under the procedure prescribed in Section 251(a), Criminal Procedure Code but for the facility provided to him under Section 173(4) of that Code an accused person would have been greatly handicapped in his defence. But in a case instituted on a complaint, like the one before us and governed by Sections 252 to 259 of the Criminal Procedure Code, no such difficulty arises. Therein the position is as it was before the amendment of the Criminal Procedure Code in 1955.

13. We are unable to agree with the learned fudges of the High Court that the legislature did not make available the benefit of Section 173(4), Criminal Procedure Code in cases instituted otherwise than on police reports by oversight. The observations of the learned Judges in the course of their judgment that "Even the great Homer occasionally nods. There is nothing to show that the legislature has applied its mind to the question of the amendment of the procedure so far as the investigation of an offence under the Sea Customs Act is concerned at the time when it was considering amendments to the Criminal Procedure Code" is without any basis. In the first place, it is not proper to assume except on very good grounds that there is any lacuna in any statute or that the legislature has not done its duty properly. Secondly from the history of the legislation to which reference has been made earlier, the reason for introducing Section 173(4) is clear. The learned judges of the High Court were constrained to hold that Section 173(4), Criminal Procedure Code in terms does not apply to the present case. But strangely enough that even after coming to the conclusion that provision is inapplicable to the facts of the present case, they have directed the learned Magistrate to require the prosecution to make available to the accused, the copies of the statements recorded from the prosecution witnesses during the enquiry under the Customs Act. They have purported to make that order under Section 94(1),

Criminal Procedure Code which to the extent material for our present purpose reads:

> "Whenever any Court … considers that production of any document or other thing is necessary or desirable for the purposes of any … enquiry, trial or other proceeding under this Code by or before such Court … such Court may issue a summons … to the person in whose possession and power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

This section does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. That much appears to be plain from the language of that section. It was impermissible for the High Court to read into Section 94, Criminal Procedure Code the requirements of Section 173(4), Criminal Procedure Code. The High Court was not justified, in indirectly applying to cases instituted on private complaints the requirements of Section 173(4), Criminal Procedure Code.

14. That apart we do not think that the High Court was justified in interfering with the discretion of the learned Magistrate. Whether a particular document should be summoned or not is essentially in the discretion of the trial court. In the instant case the Special Public Prosecutor had assured the learned trial Magistrate that he would keep in readiness the statements of witnesses recorded by the Customs Authorities and

shall make available to the defence Counsel the statement of the concerned witness as and when he is examined. In view of that assurance, the learned Magistrate observed in his order:

> "The recording of the prosecution evidence is yet commence in this case and at present there are no materials before me to decide whether or not the production of any of the statements and documents named by the accused in his application is desirable or necessary for the purpose of the enquiry or trial. As stated at the outset, the learned Special Prosecutor has given an undertaking that he would produce all the relevant statements and documents at the proper time in the course of the hearing of the case. The request made for the issue of the summons under Section 94, Criminal Procedure Code is also omnibus."

The reasons given by the learned Magistrate in support of his order are good reasons. The High Court has not come to the conclusion that the documents in question, if not produced in court are likely to be destroyed or tampered with or the same are not likely to be made available when required. It has proceeded on the erroneous basis that the accused will not have a fair trial unless they are supplied with the copies of those statements even before the enquiry commences. Except for very good reasons, the High Court should not interfere with the discretion conferred on the trial courts in the

> matter of summoning documents. Such interferences would unnecessarily impede the progress of cases and result in waste of public money and time as has happened in this case."

35. This Court was considering the issue whether the benefit of Section 173(4) of the 1898 CrPC was available in cases instituted otherwise than on a police report. Section 173(4) of the 1898 CrPC required the officer in charge of a police station to forward documents mentioned therein along with the report. It is in that context that this Court observed that the requirement of Section 173(4) cannot be read into Section 94 of the 1898 CrPC (equivalent to Section 91 of the CrPC). This Court has not considered what is provided under Sections 207 and 208 of the CrPC. In any case, this Court was not considering the right of the accused to apply under Section 91 of the CrPC at the time of leading defence evidence.

36. The right of the accused to apply under Section 91 of the CrPC for production of the documents not relied upon by the prosecution at the stage of leading defence evidence has been recognised by the decisions of this Court including the decisions

in the cases of ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re***[1] and ***Manoj & Ors***[5].

37. In the case of ***Om Prakash Sharma v. CBI, Delhi***[7], this Court dealt with the issue whether an application under Section 91 of the CrPC can be made by the accused at a stage before framing of a charge. In paragraph 6 of the decision in the case of ***Om Prakash Sharma***[7], this Court held thus:

> **"6.** The powers conferred under Section 91 are enabling in nature aimed at arming the court or any officer in charge of a police station concerned to enforce and to ensure the production of any document or other things "necessary or desirable" for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. The question, at the present stage of the proceedings before the trial court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused. If the accused could produce any

[7] (2000) 5 SCC 679 : 2000 SCC OnLine SC 776

reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. This Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial vide Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] . Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of

> judicial discretion by the court and not of any rights concretised in favour of the accused.**"**

Thus, this decision will have no application when it comes to the right of the accused to apply for the production of documents by invoking Section 91 of the CrPC at the stage of entering defence. The decision means that the said right is ordinarily not available at the time of framing of the charge. The reason is that while framing a charge, the Court can consider only that material which forms part of the chargesheet.

38. In the case of a complaint under Section 44(1)(b) of the PMLA, while framing charge, the Court can look into only the complaint and the documents produced along with the complaint. In the case of ***Nitya Dharmananda & Anr. v. Gopal Sheelum Reddy & Anr.***[8], the same view was taken by this Court while addressing the issue of the right of the accused to invoke Section 91 of the CrPC at the time of framing of charge. In the case of ***Anjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.***[9], the issue was whether the evidence in the form of a document not

[8] 2017 INSC 1201 : (2018) 2 SCC 93
[9] 2020 INSC 453 : (2020) 7 SCC 1

produced along with the chargesheet can be produced subsequently in any circumstances. In paragraph 56, this Court held thus:

> "**56**. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law."

This Court, in this case, considered the issue in the context of the prosecution producing new documents after the commencement of the trial.

39. Now, we come to the decision of this Court in the case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement***[10]**.** The issue before this Court was whether the provisions of the CrPC and especially the safeguards under Sections 160 and 161 are applicable while summoning a person under the provisions of the PMLA. This Court considered the issue of the power of the ED to issue summons for the production of documents and not the power of the Court. This decision has no relevance to the issue of the right of the accused to apply for the production of documents that are not relied upon during the trial.

40. This Court in the case of ***V.K. Sasikala v. State***[11] considered the right of the accused to seek copies of certain unmarked and unexhibited documents at a belated stage after cross-examination of the prosecution witnesses had progressed. In this case, this Court relied upon its earlier decision in the case of ***Sidharth***

[10] 2024 INSC 668 : 2024 SCC OnLine SC 2454
[11] (2012) 9 SCC 771 : 2012 SCC OnLine SC 799

Vashisht alias Manu Sharma v. State (NCT of Delhi)[12]. In paragraphs 18 to 21 of the decision in the case of ***V.K. Sasikala v. State***[11] it was held thus:

> "**18**. In a recent pronouncement in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] to which one of us (Sathasivam, J.) was a party, the role of a Public Prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court. This Court has held that though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails. The fairness of the investigative process so as to maintain the citizens' rights under Articles 19 and 21 and also the active role of the court in a criminal trial have been exhaustively dealt with by this Court. Finally, it was held that it is the responsibility of the investigating agency as well as that of the courts to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law. It was also held that one of the established facets of a just, fair and transparent investigation is the right of

[12] (2010) 6 SCC 1

an accused to ask for all such documents that he may be entitled to under the scheme contemplated by the Code of Criminal Procedure. The said scheme was duly considered by this Court in different paragraphs of the report.

19. The views expressed would certainly be useful for reiteration in the context of the facts of the present case: (Manu Sharma case [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , SCC pp. 84-86, paras 216-21)

> "216. Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section 173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, which in his wisdom is required for proving the guilt of the offender. He can record the statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence per se under Section 162 of the Code. The right of the accused to receive the documents/statements submitted before the court is absolute and it must be adhered to by the prosecution and the court must ensure supply of documents/statements to the accused

in accordance with law. Under the proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible.

217. Further, Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.

218. The liberty of an accused cannot be interfered with except under due process of law. The expression 'due process of law' shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied

obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforereferred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting

reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression 'documents on which the prosecution relies' are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given a liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation

and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the court to say that the accused has no right to claim copies of the documents or request the court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of

the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect the administration of criminal justice and the defence of the accused prejudicially."

(emphasis supplied)

20. The declaration of the law in Manu Sharma [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] may have touched upon the outer fringe of the issues arising in the present case. **However, the positive advancement that has been achieved cannot, in our view, be allowed to take a roundabout turn and the march has only to be carried forward. If the claim of the appellant is viewed in the context and perspective outlined above, according to us, a perception of possible prejudice, if the documents or at least an inspection thereof is denied, looms large. The absence of any claim on the part of the accused to the said documents at any earlier point of time cannot have the effect of foreclosing such a right of the accused. Absence of such a claim, till the time when raised, can be understood and explained in several reasonable and acceptable ways. Suffice it would be to say**

that individual notion of prejudice, difficulty or handicap in putting forward a defence would vary from person to person and there can be no uniform yardstick to measure such perceptions. If the present appellant has perceived certain difficulties in answering or explaining some part of the evidence brought by the prosecution on the basis of specific documents and seeks to ascertain if the allegedly incriminating documents can be better explained by reference to some other documents which are in the court's custody, an opportunity must be given to the accused to satisfy herself in this regard. It is not for the prosecution or for the court to comprehend the prejudice that is likely to be caused to the accused. The perception of prejudice is for the accused to develop and if the same is founded on a reasonable basis it is the duty of the court as well as the prosecution to ensure that the accused should not be made to labour under any such perception and the same must be put to rest at the earliest. Such a view, according to us, is an inalienable attribute of the process of a fair trial that Article 21 guarantees to every accused.

21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would

> travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced."
>
> (emphasis added)

41. Thus, we conclude that at the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the chargesheet. In case of the PMLA, at the time of framing

charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaint. Though the accused will be entitled to the list of documents, objects, exhibits etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.

RIGHT OF THE ACCUSED TO SEEK DOCUMENTS NOT RELIED UPON BY PROSECUTION AT THE STAGE OF ENTERING UPON DEFENCE

42. In Chapter XVIII of the CrPC containing the provisions regarding trial before a Court of Session, under Section 233, the accused has the right to lead evidence. Section 233 of the CrPC (Section 256 of BNSS) reads thus:

> **"233. <u>Entering upon defence</u>**
>
> (1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.
>
> (2) If the accused puts in any written statement, the Judge shall file it with the record.
>
> (3) **If the accused applies for the issue of any process for compelling the**

> **attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice**."
>
> (emphasis added)

43. There is a similar provision in Chapter XIX of the CrPC, which deals with the trial of warrant cases by Magistrates. Section 243 (Section 266 of BNSS) is the provision which reads thus:

> **"243. <u>Evidence for defence.</u>**
>
> (1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.
>
> (2) **If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing**:

> Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.
>
> (3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court."
>
> (emphasis added)

44. At this stage, we may note the difference between the provisions of Section 91 of CrPC and Sections 233 and 243 of CrPC. Section 91 of CrPC read thus:

> 91. Summons to produce document or other thing.—(1) **Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it**, or to produce it, at the time and place stated in the summons or order.

> (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.
>
> (3) Nothing in this section shall be deemed—
>
> (*a*) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or
>
> (*b*) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.
>
> (emphasis added)

On plain reading of sub-section (1) of Section 91, the power of the court is discretionary. The word 'may' appears in sub-section (1) of Section 91. However, if we peruse sub-section (3) of Section 233 and sub-section (2) of Section 243, the word 'shall' has been used. The reason is that these two provisions apply at the stage of the accused leading defence evidence. Therefore, it is provided that if the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the court must issue such process. The prayer for issue of such process cannot be denied unless the court, for reasons to be

recorded, holds that the application is made for the purposes of vexation or delay or for defeating the ends of justice. Therefore, the prayer for issuing process for production of documents can be denied by the court only on the limited grounds specified in sub-section (3) of Section 233 and sub-section (2) of Section 243. This right conferred on the accused is on a much higher pedestal than what is provided in Section 91 of the CrPC. Therefore, in case of a trial or trial by Court of Session, the accused under the PMLA can invoke Section 233 of CrPC (Section 256 of BNSS).

45. Therefore, at the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing. At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the

prosecution or a third party to produce a document or a thing in their possession or custody. The Court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of section 233 of the CrPC.

46. If, according to the case of the accused, the prosecution or any of the witnesses examined by the prosecution is withholding a document, in his cross-examination, the accused can always ask questions to the concerned prosecution witnesses whether they were willing to produce the said document. On the witnesses' refusal or failure, an argument is always available to the accused during the final hearing that an adverse inference should be drawn against the prosecution for non-production of the document. The accused can always invoke the presumption under clause (g) of Section 114 of the Indian Evidence Act, 1872 (clause (g) of Section 119 of the Bharatiya Sakshya Adhiniyam, 2023).

47. When at the stage of defence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under

Section 311 of the CrPC (Section 348 of the BNSS) to recall a prosecution witness already examined for further cross-examination. The reason is that the right to effectively cross-examine the prosecution witnesses is also a part of the right to have a fair trial. The accused can exercise this right even if evidence of both sides is closed.

48. In this case, we are dealing with complaints under the PMLA. As far as the applicability of provisions of the CrPC (the BNSS) to the provisions of the PMLA is concerned, the issue is no longer *res integra.* In paragraphs 22 to 25 of the decision of this Court in the case of ***Directorate of Enforcement v. Bibhu Prasad Acharya & Ors.***[13], this Court held thus:

> **"22.** As far as the applicability of Section 197CrPC to PMLA is concerned, there are two relevant provisions in the form of Sections 65 and 71 PMLA which read thus:
>
> > "65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

[13] (2025) 1 SCC 404 : 2024 SCC OnLine SC 3181

***

71. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

23. Section 65 makes the provisions of CrPC applicable to all proceedings under PMLA, provided the same are not inconsistent with the provisions contained in PMLA. The words "all other proceedings" include a complaint under Section 44(1)(b) PMLA. We have carefully perused the provisions of PMLA. We do not find that there is any provision therein which is inconsistent with the provisions of Section 197(1)CrPC. Considering the object of Section 197(1)CrPC, its applicability cannot be excluded unless there is any provision in PMLA which is inconsistent with Section 197(1). No such provision has been pointed out to us. Therefore, we hold that the provisions of Section 197(1)CrPC are applicable to a complaint under Section 44(1)(b) PMLA.

24. Section 71 gives an overriding effect to the provisions of PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of CrPC applicable to PMLA, subject to the condition that only those provisions of CrPC will apply which are not inconsistent with the provisions of PMLA. Therefore, when a particular provision of CrPC applies to proceedings under PMLA by virtue of Section 65

PMLA, Section 71(1) cannot override the provision of CrPC which applies to PMLA.

25. Once we hold that in view of Section 65 PMLA, Section 197(1) will apply to the provisions of PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1)CrPC will not apply to PMLA. A provision of CrPC, made applicable to PMLA by Section 65, will not be overridden by Section 71. Those provisions of CrPC which apply to PMLA by virtue of Section 65 will continue to apply to PMLA, notwithstanding Section 71. If Section 71 is held applicable to such provisions of CrPC, which apply to PMLA by virtue of Section 65, such interpretation will render Section 65 otiose. No law can be interpreted in a manner which will render any of its provisions redundant.**"**

(emphasis added)

49. After carefully perusing the provisions of the PMLA, we did not find any provision of the PMLA which is inconsistent with Section 91 of the CrPC. The power under sub-section (1) of Section 91 can be exercised by a Court when the production of any document or any other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under the CrPC. The consistent line of judgments of this Court hold that at the stage of framing of charge, the accused is ordinarily not entitled to apply under Section 91 of the CrPC for

producing the documents which are not relied upon by the complainant. For the purposes of his defence, the accused has a right to seek production of a document or a thing at the stage of leading defence evidence as Section 233 of CrPC will apply to the trial of an offence under the PMLA, due to the fact that Chapter XVIII of the CrPC is made applicable to such trial in view of clause (d) of Section 44(1) of the PMLA. We find that there is no provision under the PMLA which is inconsistent with Section 233 of the CrPC.

50. Section 24 of the PMLA is material. It reads thus:

> "**24. Burden of Proof**.—In any proceeding relating to proceeds of crime under this Act,—
>
> (a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
>
> (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

This drastic provision was incorporated w.e.f. 15th February, 2013.

In the case of ***Vijay Madanlal Choudhary & Ors. v. Union of***

India & Ors.[14]*,* this Court upheld the constitutional validity of this provision, which puts a negative burden on the accused.

51. Thus, as compared to traditional penal statutes, at the time of trial of the offence under the PMLA, there is a huge negative burden put on the accused. Therefore, it is all the more necessary that sub-section (3) of Section 233 of CrPC (Sub-section (3) of Section 256 of the BNSS) should be liberally construed in favour of the accused. The reason is that the constitutional validity of Section 24 has been upheld on the ground that the accused has a full opportunity to show that he has not violated the provisions of the PMLA. He is entitled to rebut the presumption. Therefore, if the Special Court refuses the prayer made by the accused in terms of Sub-section (3) of Section 233 for compelling the attendance of any witness or for production of a document in custody of ED or a third party, the accused will not be in a position to discharge the onerous burden on him under Section 24 of the PMLA. Hence, the valuable right of the accused under Section 233(3) of the CrPC needs to be protected.

[14] 2022 INSC 757; (2023) 12 SCC 1

THE RIGHT TO SEEK PRODUCTION OF DOCUMENTS FOR THE PURPOSES OF BAIL APPLICATIONS GOVERNED BY SECTION 45(1)(ii)

52. In the context of the PMLA, another issue arises. Section 45 of the PMLA reads thus:

> **"45. Offences to be cognizable and non-bailable.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—
>
> (i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and
>
> **(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:**
>
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—
>
> (i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.**"**

(emphasis added)

The accused can be released on bail only when the Special Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Therefore, at the time of hearing of a bail application, there is a burden on the accused to satisfy the Special Court that there are reasonable grounds for believing that he may not be guilty of the offence under Section 3 of the PMLA. This is an extraordinary and standalone provision which puts the burden on the accused at the stage of seeking bail. Therefore, the question

is whether, at the stage of considering the prayer for bail, the accused, by invoking Section 91 of the CrPC (Section 94 of the BNSS), can apply to get the documents produced. If a narrow view is taken, by denying this opportunity to the accused, he will not be in a position to discharge the burden on him, and therefore, it will affect his right to liberty as he may be denied bail. This denial will amount to a violation of his rights guaranteed under Article 21. Therefore, at the stage of hearing of a bail application to which stringent provisions of Section 45(1)(ii) of the PMLA are applicable, the accused must be allowed to invoke the provision of Section 91 of the CrPC for seeking production of the documents not relied upon by the ED. But, when the investigation is pending, while permitting the accused to seek production of documents that are not relied upon by invoking Section 91 of the CrPC, care has to be taken to ensure that the investigation is not prejudiced. Therefore, when such an application is made, the ED is entitled to resist the production of documents that are not relied upon on the ground that if the said documents are disclosed at that stage to the accused, it may prejudice the investigation. Though the ED is entitled to raise the said plea, it will have to show the documents

to the Court. The Court can, for reasons recorded, deny production of documents only if it is satisfied that the disclosure of the documents may prejudice the ongoing investigation. Needless to add that the ED cannot raise such an objection after the investigation is complete.

53. Provisions like Section 45(1)(ii) or Section 24 of the PMLA are very drastic provisions. Very few penal statutes contain such provisions. Under the said provisions, the accused has a very heavy burden to discharge. Perhaps, the enactment of PMLA was due to the drastic changes in the world we have seen in the 21st century. The presence of modern technology has brought about new categories of crimes. This law has been enacted taking into consideration the changing needs. A Constitution Bench of this Court in the case of ***Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.***[15] in paragraph 29 held thus:

> "29. The Constitution Bench in Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] emphasised that **the principle of transforming constitutionalism also places**

[15] (2023) 4 SCC 541

> **upon the judicial arm a duty to ensure that a sense of transformation is ushered consistently in the society by interpreting and enforcing the constitutional as well as other provisions of law.** Constitutional law has developed a great deal during the last few decades. The interpretation of various provisions of the Constitution made by this Court decades back has undergone a drastic change. For example, the narrow interpretation given to Article 21 in the "A.K. Gopalan" era is no longer valid. The concept of freedom has undergone changes. In the 21st Century, society looks completely different from what it looked in the last century. We see a change in the socio-cultural ethos of society. **Thus, the interpretation of law must keep pace with changing needs of society**."

54. We have seen a major shift in the interpretation of rights conferred by Article 21 of the Constitution after ***A.K.Gopalan'*** s case. When the Legislature has felt a need to bring out a legislation like the PMLA, it is the duty of the Court to interpret Article 21 in such a way that the right of a fair trial available to the accused is not affected. The object of the provisions of Section 24 or 45(1)(ii) is not to take away the fundamental right of fair trial conferred on the accused. These provisions are different in the sense that they put a burden on the accused. When such a burden is put on the accused, it is all the more necessary that the right

of fair trial guaranteed under Article 21 to the accused is protected by permitting the accused to lead defence evidence by seeking the production of witnesses and documents not relied upon by the prosecution. Similarly, for discharging the burden under Section 45(1)(ii), the accused has the right to invoke Section 91 of CrPC (Section 94 of the BNSS) for seeking production of documents at the stage of hearing of bail application.

CONCLUSION

55. Hence, some of our important conclusions are as under:

(a) When records, instruments or documents of title of the property are seized along with the property under Sections 17 and 18 of the PMLA, the accused from whom the same are seized is entitled to true copies thereof;

(b) Once cognizance is taken on the basis of a complaint under Section 44(1)(b) of the PMLA, the learned Special Judge must direct that along with the process, a copy of the complaint and the following documents be provided to the accused;

(i) Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

(ii) The documents including the copies of the Statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the documents produced subsequently by the ED till the date of taking cognizance; and

(iii) Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

(c) We hold that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91 of the CrPC (Section 94 of the

BNSS) for providing copies of the documents which are not relied upon by the prosecution.

(d) At the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the chargesheet. In case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaints. Though the accused will be entitled to a list of documents, objects, exhibits etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.

(e) At the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing in accordance with Section 233(3) of the CrPC (Section 256(3) of the BNSS). At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the

accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the prosecution or a third party to produce a document or a thing in their possession or custody. The Court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of section 233 of the CrPC.

(f) When at the stage of defence evidence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under Section 311 of the CrPC (Section 348 of the BNSS) to recall a prosecution witness already examined for further cross-examination. The reason is that the right to effectively cross-examine the prosecution witnesses is also a part of the right to have a fair trial. The

accused can exercise this right even if evidence of both sides is closed.

(g) As compared to traditional penal statutes, at the time of trial of the offence under the PMLA, there is a huge negative burden put on the accused. Therefore, it is all the more necessary that sub-section (3) of Section 233 of CrPC (Sub-section (3) of Section 256 of the BNSS) should be liberally construed in favour of the accused. The reason is that the constitutional validity of Section 24 has been upheld on the ground that the accused has a full opportunity to show that he has not violated the provisions of the PMLA. He is entitled to rebut the presumption. Therefore, if the Special Court refuses the prayer made by the accused in terms of Sub-section (3) of Section 233 for compelling the attendance of any witness or for production of a document in custody of ED or a third party, the accused will not be in a position to discharge the onerous burden on him under Section 24 of the PMLA. Hence, the valuable right of the accused under Section 233(3) of the CrPC needs to be protected.

(h) At the time of hearing of an application for bail governed by Section 45(1)(ii) in connection with the offences under Section 3 of the PMLA, an accused is entitled to invoke Section 91 of the CrPC (Section 94 of the BNSS) seeking production of unrelied upon documents. If investigation or further investigation in progress, the ED is entitled to raise objection to production of documents sought by the accused on the ground that if the documents are disclosed at this stage to the accused, it may prejudice the investigation. Only if the Court after perusing the documents is satisfied that the disclosure of the documents at that stage may prejudice the ongoing investigation, it can deny the prayer for the production of such documents.

56. Hence, we pass following orders:

(i) In Criminal Appeal No. 1622 of 2022, the impugned judgment and order dated 22nd July, 2019 is hereby quashed and set aside. It is held that the appellants are entitled to copies of the documents produced along with the complaint under Section 44(1)(b). The ED is directed to provide soft or legible copies of all the documents produced

along with the complaint, which have not been supplied till today within a period of one month from today.

(ii) In Criminal Appeal 730 of 2024, the impugned order is hereby quashed and set aside. We direct the ED to supply true copies of the documents seized from the premises of the accused within a period of one month from today. It will be open for the ED to provide soft copies of the said documents.

57. The appeals are allowed in the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Ahsanuddin Amanullah)

.....J.
(Augustine George Masih)

New Delhi;
May 07, 2025